

FILED WITH THE BOARD OF  
PSYCHOLOGICAL EXAMINERS  
ON December 4, 2012  
*J Michael Walker*

STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
STATE BOARD OF PSYCHOLOGICAL EXAMINERS  
OAL DOCKET NO. BDS 05512-08

IN THE MATTER OF THE SUSPENSION  
OR REVOCATION OF THE LICENSE OF

FINAL DECISION AND ORDER

MARSHA KLEINMAN, Psy.D  
LICENSE NO: 35SI00231900

TO PRACTICE PSYCHOLOGY IN THE  
STATE OF NEW JERSEY  
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This matter was opened before the New Jersey State Board of Psychological Examiners ("the Board") by way of a Complaint by the Attorney General against Respondent Marsha Kleinman, Psy.D., filed with the Board on July 27, 2007. The five-count Complaint alleged that Respondent's conduct in providing psychological services to S.R., a three year-old child, was in violation of the statutes and regulations governing the practice of psychology. The Complaint included, among other allegations in Count I, that Respondent served in multiple roles including counselor and play therapist, parenting time monitor and forensic evaluator; conducted suggestive, coercive or manipulative questioning of the child to investigate alleged sexual abuse in violation of professional standards; and failed to give a balanced assessment of the facts of the case to the court which appointed her and which was determining visitation issues. Count II alleged inter alia that Respondent, in treating the child and exercising her authority over visitation, failed to obtain

reasonably available information to assess whether the child's emotional distress was attributable to sources other than alleged sexual abuse by the father, and that prior to recommending immediate suspension of visitation Respondent failed to assess family dynamics; Count III alleged in part that Respondent failed to inform the Court of exculpatory information regarding the alleged sexual abuse when it was foreseeable her input would be relied upon in deciding custody and visitation issues; and Count IV alleged, among other allegations, that Respondent's competence, education and training did not qualify her as an expert in the fields she professed-forensic investigations and child sexual abuse-and her findings, recommendations and representations to the Court demonstrate she was deficient in one or more areas of her practice.

#### PROCEDURAL HISTORY

This matter was forwarded to the Office of Administrative Law on October 4, 2007. The case was assigned to Joseph Paone, Administrative Law Judge. An Amended Complaint was filed on February 21, 2008 by the Attorney General to include Count VI, alleging that Respondent failed to produce a battered women's certification, advised D.C. to fabricate allegations her husband had sexually abused their daughter in order to gain leverage in a custody dispute, and referred D.C. to Respondent's sister, an attorney, for representation in her divorce, all alleged to constitute professional misconduct in violation of N.J.S.A. 45:1-21(e). An

Answer in response to the Amended Complaint was filed on June 4, 2008.

Multiple motions were filed by the Respondent in the Superior Court of New Jersey, Law Division and the Office of Administrative Law and the Appellate Division.<sup>1</sup> Hearing dates were scheduled and about to commence when the ALJ was elevated to the Superior Court and the case was reassigned to ALJ Edith Klinger on January 14, 2010. Hearings took place on 23 days (19 days of testimony, the remainder argument) commencing on September 24, 2010 and continuing in September and October of 2010, March, April, May and June of 2011. There was a six month adjournment of the hearing dates due to the illness of Respondent's attorney, Mr. Kern. He was replaced by Mr. Daniel Giaquinto, Esq., of the same firm, in March of 2011 after Mr. Kern's untimely death. Post-hearing submissions were due on July 27, 2011.

The ALJ experienced significant medical problems and obtained numerous orders of extension for the issuance of the Initial Decision. The decision was issued on July 13, 2012. Upon the request of Respondent for an extension of time for the filing of exceptions and of the State for reply, a short extension was granted due to the voluminous record in this case, and the significant time since the hearings. The Respondent filed Exceptions on August 8,

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<sup>1</sup> A listing of the motions filed appears in Appendix attached and made a part hereof.

2012. The Attorney General filed a Reply to Exceptions on August 20, 2012. The final hearing was scheduled for September 10, 2012, however Respondent requested and was granted an adjournment due to a serious medical condition of an immediate family member. The final hearing was re-scheduled to October 22, 2012. It was adjourned after ten hours and continued on a second and final date of November 5, 2012.

#### MOTIONS AT FINAL HEARING BEFORE THE BOARD

On October 22, 2012 the Board heard oral arguments on two motions of Respondent, a motion to dismiss for lack of speedy resolution and in the alternative, a motion to remand and reopen the matter based on arguments not previously raised or incompletely considered. Daniel Giaquinto, Esq. represented the Respondent, while the State was represented by DASG Siobhan Krier and Carla Silva.

Regarding the motion to dismiss for "lack of speedy resolution" the Respondent argued that similar to the constitutional right to a speedy trial afforded in criminal matters, speedy resolution should apply to an administrative case. Respondent relied on the case of In Re Arndt 67 N.J. 43,341 A.2d 596 (1975). Respondent also alleged that she was subject to harassment and was immediately impacted by this matter as evidenced by her reduced income and the reduction in the number of clients in her practice. She argued she has been targeted by a "father's group" ever since she became involved with children who encountered abuse in the early 1990's.

She also asserted she suffered personally. Respondent acknowledged there was no prejudice to the defense of this administrative action, but argued there were collateral consequences of a complaint like this being filed and the notoriety it engenders.

Respondent argued the burden is on the State to move this case, and that delays attributable to the Respondent's exercise of her right to defend herself, the elevation of the ALJ to Superior Court, investigation and preparation by the State in advance of litigation, and the year the successor ALJ took to draft and issue the initial decision were unacceptable.

The State argued no undue delay occurred in this matter. The Attorney General conducted a thorough investigation including the Board's review of the allegations in a consumer complaint, investigation, holding inquiries, obtaining expert review, and the prosecution stage where the case was prepared and tried in the administrative arena. The Attorney General argued that after the Administrative Complaint was filed with the OAL in September 2007, the Respondent was responsible for four of five adjournments. The first adjournment involved Respondent's change in counsel, the second was necessitated by Respondent filing a motion in Superior Court and the next hearing date scheduled in 2009 was adjourned because Respondent requested time to review additional documents. The ALJ's elevation to the Superior Court resulted in the fourth postponement in beginning the hearing. A fifth postponement resulted

from the unavailability of Respondent's expert witnesses in 2010 which resulted in pushing the hearing date into 2011. The second ALJ in this case suffered a broken shoulder which caused delay. The ALJ was unable to complete the decision until July of 2012.

The Attorney General further asserted that the case relied on by the Respondent, In Re Arndt 67 N.J.432 (1975) was not dismissed simply due to delay but rather due to resulting harm to the defendant's case, including the loss of recollection by witnesses which did not occur in the current matter. Video and audio tapes as well as the Respondent's patient records provided evidence, and D.C., a witness in this case, had clear recollection of what occurred while she sought psychological services from the Respondent.

The DAG pointed out Respondent admitted that the case was not prejudiced by the delays but asserts personal prejudice. Respondent chose to appear on a news telecast, and created a website to air the issues in this case. Respondent sought out the opportunity to make this public and now cannot complain that the publicity caused her harm. In closing, the Attorney General argued that the delays in this matter did not affect or prejudice the prosecution of the case and that the Board should not dismiss merely because there were delays.

The Board deliberated in executive session, and returning to public session, voted unanimously to deny Respondent's motion. The

Board recognized that it took many years to bring this matter to resolution, and is aware that significant delays were attributable to the Respondent. In addition to those adjournments raised by the State, during the investigation Respondent requested and was granted adjournments to provide the Board with a written response to the allegations in the consumer complaint due to a medical issue, and sought adjournments of her appearances at two investigative inquiries. The Administrative Complaint, filed on July 27, 2007, was transmitted to the Office of Administrative Law ("the OAL") on October 4, 2007. The case was at the OAL from October 7, 2007 through July 12, 2012.

The Board recognized that there is no precedent for requiring speedy resolution in an administrative proceeding. The Respondent admitted that the defense and resolution of her case was not prejudiced by the delays cited. An examination of the delays demonstrated that significant delays resulted from the actions of the Respondent. Numerous motions filed by the Respondent required response and opposition by the State. It is disingenuous for the Respondent to argue that the Board should not consider her defense of the case which included extensive motion practice resulting in numerous delays, while admonishing the State for opposing motions. No proof was submitted by Respondent that the administrative law judge failed to properly manage this matter. The Board believes that the numerous adjournments permitted by the ALJs provided the

Respondent due process and aided her ability to vigorously defend her case.

For the reasons set forth, the Board moved to deny the motion for lack of speedy resolution. Respondent's prejudice was of a personal and financial nature and she failed to prove that the delays in the case resulted in prejudice to the prosecution of the case at the OAL. Accordingly, the Board denied this motion.

The second motion brought by Respondent was a motion to remand and re-open the matter to the OAL to consider "issues or arguments not previously raised or incompletely considered" in the matter below as permitted by N.J.A.C. 1:1-18.5(b). Respondent pointed out that Dr. Martindale, the State's witness, was critical of Dr. Kleinman for failing to form an alternate working hypothesis in her treatment of S.R. other than concluding that the child was sexually abused. Respondent contended that the case of S.R. was ongoing for a year prior to Respondent's involvement. She further argued that there were findings by a matrimonial judge, DYFS, referrals, a report from the Guardian Ad Litem ("GAL") appointed for S.R., and evaluations of S.R. which suggested something happened to S.R. Respondent was prohibited by the ALJ from introducing this evidence because the ALJ ruled that the purpose of this proceedings was not prosecution of the father, D.R. Respondent argues that the Board cannot make a determination as to whether Respondent's working hypothesis and her therapy were proper because it lacked



information. In the case of D.C., the ALJ's refusal to permit evidence from her divorce matter prevented Respondent from demonstrating that she and Dr. Martindale, the State's primary witness, had a previous personal relationship.

The Respondent also alleges that Dr. Martindale should be disqualified as an expert witness alleging that he was unethical because he modified his expert reports and misrepresented his credentials on his curriculum vitae.<sup>2</sup> Thus the Respondent argued that without the information raised in her brief and arguments the Board did not have a complete record to make its determination and that remand was warranted.

The Deputy Attorney General opposed the motion to remand arguing the issues presented by the Respondent were raised and fully addressed by the ALJ. The Attorney General argued that it was uncontested in the record in this case that P.R., former wife of D.R., alleged sexual abuse during the divorce matter. The allegation that "something happened" to S.R. is uncontested as well. The Attorney General also pointed out that the ALJ was clear in her reasoning, precluding evidence as the question before the ALJ was not whether D.R. was guilty of sexual abuse but whether Dr. Kleinman's care and treatment of the child, S.R., was within the standard of practice of a licensed psychologist. The State further

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<sup>2</sup> Dr. Martindale's expert reports were not entered into evidence in this case.

questioned the Respondent's reliance on these documents regarding the existence of sexual abuse, as they were not available to Dr. Kleinman at the time that she was providing psychological services to S.R.

Regarding the objection to Dr. Martindale, the State relied upon the ALJ's qualification of this licensed New Jersey psychologist as a forensic expert. The State pointed out that Respondent subjected Dr. Martindale to voir dire prior to his being qualified to testify and cross-examined him extensively for three days during the trial.

The State requested that the Board not consider the documents that were submitted in support of the remand motion as these documents were not part of the record below.

Following deliberations, the Board in open session voted that the motion for remand be denied and that the record in this matter would not be expanded to include the materials submitted by Respondent with this motion. The Board agreed with the State's argument and the ALJ's conclusion that it was not necessary to determine whether or not D.R. sexually abused his daughter to decide whether the psychological services provided to S.R. by the Respondent were within the standards of practice of psychology. Therefore, it was not necessary for the Board to consider documents from the DYFS matter or the matrimonial matter between P.R and D.R. The existence of the videotapes, the Respondent's client records,

audiotapes and correspondence was sufficient to consider when rendering a decision on the charges raised in the administrative complaint against the Respondent. Regarding the request to remand for additional information on whether the State's expert witness, Dr. Martindale, was qualified, the Board was satisfied that the ALJ sufficiently reviewed the credentials of Dr. Martindale and found him qualified as an expert in psychology and forensic psychology. Nothing now raised by Respondent would alter the Board's view that Dr. Martindale was properly qualified to testify in this matter.

Respondent also argued that remand was necessary to obtain information regarding the extent, if any, of previous involvement between Dr. Martindale and D.C. (Count VI). Both D.C. and Dr. Martindale testified during the trial as to any contacts they had. While Respondent disagrees that it was not "mere happenstance" that D.C. and Dr. Martindale met for the first time in her attorney's office when D.C. was present as a volunteer for other individuals and questions the extent of Dr. Martindale's involvement in the case, the record supports that Dr. Martindale provided a certification in the D.C. matter and there is no proof that substantiates any other involvement between these two individuals. Ultimately the ALJ made a determination of the credibility of D.C. based upon her sworn testimony in this matter and found her to be credible. Based on all of these reasons the Board denied the motion for remand and immediately thereafter proceeded to the oral

arguments on Exceptions.

#### ARGUMENT ON EXCEPTIONS

Respondent argued in its Exceptions that the ALJ was biased in this matter due to the ALJ's comment during a discussion of availability of Respondent's counsel for a previously scheduled hearing date, when the Judge indicated to the State that if it had the same authority as the Medical Board, the State might want to seek to temporarily suspend the Respondent's license in light of the delay. The Board finds that this one isolated remark does not establish bias, and the ALJ's ultimate findings appear well-supported by sufficient credible evidence.

Respondent's major exception appears to be that the ALJ did not give the testimony of the Respondent's experts greater weight than those of the State. She is critical of Dr. Adler-Tapia, who qualified as a State expert in EMDR, a treatment for trauma disorders involving reprocessing of memories to develop coping mechanisms, and her alleged rigid adherence to the eight step process involved. Respondent asserts she did not admit that an adaptive form of EMDR could be used on a three year-old child. We note however, that the record demonstrates Respondent adhered to almost none of the steps to be expected in EMDR. The judge found all of the experts to be qualified, and provided cogent reasoning as to her acceptance of the testimony of the State's witnesses, including specifics of their testimony and the lack of familiarity

of Respondent's witnesses with the record of this matter.

Respondent also took exception to the criticism of Dr. Kleinman for the issues reported to the divorce court, especially her failure to tell the court that the child reported that a tablecloth came out of D.R.'s penis and that the penis was green. Respondent argued that nitpicking was going on and that Respondent as a play therapist appointed by the court had plausible reasons for summarizing certain issues to the court and not reporting other issues. However, Respondent's failure to report possibly exculpatory information to a court, while reporting all negative information, is a significant issue.

The Respondent also asked the Board not to rely on the taped telephone calls between Dr. Kleinman and D.R. Respondent contends that she did not consent to the taping of the telephone calls and thus it violates the New Jersey Wiretap and Electronic Surveillance Control Act ("the Wiretap Act") pursuant to N.J.S.A. 2A:156A-1 et. seq. The State responded that all relevant evidence is considered in an administrative proceeding and that there was no legitimate privacy interest, as Respondent had shared this information with the Court. We find the audiotape was properly considered.

Respondent encouraged the Board to review the videotapes especially the first videotape from October 13, 2003 where the child returned to a session crying and screaming and after being calmed by the Respondent, counsel claimed the child without prompting or

suggestion, tells the Respondent that "her daddy made her feel angry because he put the thing in my hiney." Respondent asks the Board to note this was the working hypothesis she ran with.

In closing, the Respondent argued that the State did not prove its case and that the Board should disregard the opinion of the ALJ as it is wrong, flawed and not to be trusted.

The Attorney General argued that the ALJ properly decided this matter. After 19 days of hearings, in a 90 plus page initial decision, the ALJ reviewed and considered all of the expert testimony and detailed her rationale for consideration of the competent evidence in the record and the basis for her decision. Thus, the State urged the Board to accept the findings of facts and conclusions of law adopted by the ALJ.

The State responded to Exceptions regarding the credibility of D.C. (the sixth count). The State proved that D.C. was a battered woman who sought Respondents' services to obtain a battered woman syndrome certification. During the course of the visits with the Respondent, D.C. was told by Dr. Kleinman to allege that her husband sexually abused her child in order to obtain the upper hand in the custody battle for their infant child. The State argued that D.C. had no reason to lie. The State further argued that the evidence in the case supports that Dr. Kleinman referred D.C. to her sister, who is an attorney, through a third party and then she conflicted herself out of the case, kept the majority of the retainer paid to

her by D.C. and never produced the requested certification.

The State argued that although this case may have been a battle of the experts, it was the videotapes that provided the strongest evidence. The videotapes depicted the Respondent manipulating S.R. with relentless and coercive questioning. The Attorney General pointed out that the November 4<sup>th</sup> and 5<sup>th</sup> videotapes show the child being interrogated over multiple sessions. Respondent clearly is attempting to have the child say that D.R. (S.R.'s father) was hiding in a closet during her evaluation by another psychologist.

The November 5, 2003 transcript of the videotape on page 105 contains an example of the Respondent telling S.R. what she had allegedly said previously but the child's statements allegedly made such as "Daddy's magic wand is his peepee" were not memorialized anywhere in the patient record. The only time it is presented is by the Respondent herself with no other corroboration. The November 5 videotape also has an example of Respondent putting ideas in the three year-old's mind. The child is heard guessing that a tablecloth came out of her father's penis. Respondent asks whether it is "wet or dry" giving the child the idea that it can be wet or dry. The child responds saying "dry" and it is followed up with Respondent asking "is it ever wet?" When the child says no, Respondent continues to question her. This same video also has the Respondent repeatedly saying that D.R. put his penis in the child's mouth. The Attorney General posited that only Dr. Kleinman utters

this statement. The child repeatedly says "no" and Respondent repeats over and over "think about your mouth, that's not what you told me before."

The State asserted that the evidence in the case demonstrates that the Respondent made repeated attempts to keep father and daughter apart. After meeting with the child at the first session, Respondent writes to the court and requests no contact between the father and child without having ever spoken to the father. The court issues an order based on the representations in the correspondence it received from the Respondent which minimized the risk of separation. Respondent succeeded in keeping a three year-old from her father for nine months. Respondent through her correspondence also attempted to keep the child from other mental health care professionals informing the court that the professionals were unqualified or affiliated with the father's group. Correspondence to the court also demonstrated that Respondent failed to report exculpatory information regarding the father. Respondent failed to advise the court that the child stated the penis was green, or that a tablecloth came out of the penis. Respondent referred to domestic violence in correspondence to the court that misrepresented D.R. as the perpetrator when the child reported to her that it was D.R. who was injured.

The State further argued that Respondent falsely testified before the board that she had advanced training in EMDR and received



supervision for one year from Dr. Robert Tinker. Yet Dr. Tinker testified that he never supervised the Respondent. Further Respondent's testimony on cross-examination revealed her lack of familiarity with Post Traumatic Stress Disorder ("PTSD"), EMDR and dissociation, as found by the ALJ.

The Attorney General stated that the evidence in the record supports that while the Respondent claims to be only a treating psychologist, in her court appointed assignment she took on the forensic role and acted as an evaluator. Her own expert witness testified that a psychologist cannot perform both the role of a treating therapist and forensic evaluator and that it is the responsibility of the licensed psychologist to advise the court of the conflict and assume only one role. Although Respondent alleges she was just treating the child, the evidence portrayed her on videotape interrogating the child and informing the child that it is alright to tell secrets when Dr. Kleinman was divulging information to the court. The correspondence issued by Respondent further supports that she continued to make recommendations regarding custody and visitation to the court and thus was acting as a forensic evaluator.

The State further contended that upon performing the role of forensic evaluator Respondent failed to adhere to appropriate standards of care. The record did not contain documentation from other providers which was available, her client records were

substandard, and she failed to interview others including the father of the child. She asked leading questions inappropriate for a forensic evaluator.

The State also argued that the evidence in the record demonstrated that Respondent's clinical work was negligent. She failed to assess the family dynamics, her records do not demonstrate the development of a treatment plan or treatment goals and failed to contain follow up assessments. Respondent from the start of this case assumed the child was traumatized without performing an independent assessment to determine whether trauma had occurred. The Attorney General noted that the Respondent never seriously considered another hypothesis other than that the father had sexually abused the child. She failed to explore the effect of the highly contentious divorce on the child, or questions raised about parental mental health. Respondent claimed the child had a psychotic break as a result of attending a supervised visitation, yet she failed to seek immediate medical care for the child she alleged was having an acute emergency. If in fact the child had a psychotic break, all EMDR experts testifying in this case agreed that EMDR should not be continued if the patient is in a dissociative state, yet Respondent continued performing EMDR.

The State contends that its expert witnesses, Drs. Martindale and Dr. Adler-Tapia had the experience and education to testify in the areas of forensic psychology and EMDR respectively, and were

deemed qualified by the ALJ. Dr. Greenwald, Respondent's expert on EMDR, while concerned with Dr. Adler-Tapia's rigid adherence to the eight step process, conceded that, while adaptations to the process are made for its application to young children, it did not relieve the practitioner from achieving all eight steps, even in a modified fashion. Both the videotapes and the client record support that Respondent failed to achieve most of the eight steps in her treatment sessions.

In closing, the Attorney General urged the Board to accept the ALJ findings of fact and conclusions of law noting that the ALJ had weighed and assessed each expert's testimony in the Initial Decision and provided a reasoned opinion as to the weight that was given to each expert witness.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon consideration of the entire record, arguments of counsel regarding Exceptions, and review of the submissions, the Board deliberated in executive session, and voted on and announced its decision on the record in open session. Based on the underlying record, including transcripts, videotapes, audio tapes and other exhibits, the Board determined to adopt the findings of fact and conclusions of law as set forth in the Initial Decision of the ALJ which is incorporated herein with the following exception:

In Count IV, the findings on the bottom of page 78<sup>3</sup> of the Initial Decision referring to misrepresentation of her expertise beyond her competence and training are modified to read as follows:

Respondent held herself out to be an expert in the area of forensic investigations and child sexual abuse. Despite her training and experience, her conduct in this case demonstrates that she is not an expert in the fields relevant to the case.

Thus, the Board adopted the ALJ's findings regarding Count I including that the actions of the Respondent in questioning S.R. regarding alleged sexual abuse and her acting as a forensic psychologist while engaged in play therapy with S.R. constituted gross misconduct, repeated acts of malpractice, and professional misconduct under N.J.S.A. 45:1-21, and the misuse of influence in a manner that exploits the client's trust and dependency under N.J.A.C. 13:42-10.8(g) because she repeatedly encouraged S.R. to share her secrets without telling her that she was reporting every conversation, while simultaneously providing the Court with distorted reports of what S.R. actually said. That conduct constituted not only repeated acts of malpractice, but also gross malpractice under N.J.S.A. 45:1-21(c) and (d) because her conduct

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<sup>3</sup>At the hearing the Board erred in referring to p. 6 of the Initial Decision, where the allegation is listed.

fell far below the degree of care, knowledge, and skill ordinarily possessed and exercised in similar situations by the average psychologist. For example, she questioned S.R. in a coercive manner by repeatedly asking leading questions, corrected S.R. when the answer did not meet expectations, and offered rewards while positing repeated questions. The ALJ found that the manner in which the Respondent questioned S.R. and acted as a forensic psychologist also constituted professional misconduct under N.J.S.A. 45:1-21(e), because coercive questioning was inherently wrong, was unprofessional, and tainted any possible investigation of sexual abuse against D.R.

Similarly, we agree with the ALJ's findings as to Count II including that Kleinman's failure to obtain all reasonably available, relevant information constituted gross malpractice, repeated acts of malpractice, and professional misconduct under N.J.S.A. 45:1-21(c), (d) and (e). Her conduct fell far below the degree of care, knowledge, and skill ordinarily possessed and exercised in similar situations by the average psychologist when she proceeded with her treatment plan for S.R, solely on the basis of statements made by S.R.'s mother, and failed to seek a release to obtain reports from S.R.'s pediatrician or DYFS. The record lacks any evidence indicating that Kleinman reached out to other sources of information, such as interviewing S.R.'s other parent or contacting S.R.'s school and/or teachers to determine whether S.R.

behaved differently in other situations. We agree with the ALJ that her failure to obtain all reasonably available, relevant information and documentation means she did not have a complete picture prior to treating S.R. or even after observing what Kleinman described as a "psychotic-like break with reality" and this was inherently wrong and unprofessional.

As to Count III we find, as did the ALJ, that Kleinman's reporting to a Court constituted not only repeated acts of malpractice, but also gross malpractice under N.J.S.A. 45:1-21(c) and (d), because her conduct fell far below the degree of care, knowledge, and skill ordinarily possessed and exercised in similar situations by the average psychologist when she reported to the court. Respondent reported to the Court with at best, a one-sided and biased depiction of the abuse allegation against S.R., and at times Respondent actively misled the court in a manner that suggested that the abuse was substantiated, because she failed to inform the court that S.R. made statements inconsistent with a finding of abuse, including that D.R.'s penis was "green." Respondent's choice not to inform the court about statements made by S.R. suggesting that her mother coached her to make certain responses suggesting abuse, constituted professional misconduct in violation of N.J.S.A. 45:1-21(e). The reporting was inherently wrong and unprofessional, in that it resulted in the court relying on biased and incomplete information when deciding D.R.'s visitation

rights. Additionally, Respondent's reporting to the court violated N.J.A.C. 13:42-10.8(f) because her non-disclosures and omissions both distorted and suppressed her findings.

We further agree with the ALJ's findings regarding Count IV as modified, that Kleinman's claim that she was an expert in performing EMDR with children and her decision to treat S.R. in that manner constituted not only repeated acts of malpractice, but also gross negligence under N.J.S.A. 45:1-21(c) and (d), because her conduct fell far below the degree of care, knowledge, and skill ordinarily possessed and exercised in similar situations by the average psychologist when she could not identify the criteria for PTSD, lacked a thorough understanding of dissociative disorders, and never received advanced training in EMDR from Dr. Tinker as she claimed. The record reflects that Respondent had no real grasp of even basic EMDR. Despite her training and experience, her conduct in this case constituted professional misconduct under N.J.S.A. 45:1-21(e) and N.J.A.C. 13:42-10.8 because both were inherently wrong and unprofessional, and a danger to S.R.'s welfare, in that she risked implanting false memories and may have made S.R.'s situation worse. The ALJ also found this conduct to violate N.J.A.C. 13:42-10.9.4(a) and N.J.A.C. 13:42-9.7(g) because Respondent failed to "accurately and objectively represent" her competence or training and offered professional service she should have known was beyond her ability during the treatment of S.R. The

ALJ found that this conduct also violated N.J.A.C. 13:42-10.4(d) because Kleinman failed to "maintain competence consistent with professional responsibilities" regarding standards of practice, including the difference between a treating psychologist and a forensic psychologist and the proper method to question a child, and practiced beyond her area of competence.

The ALJ also found, and we agree, as to Count V, that the Respondent's recordkeeping practices violated N.J.A.C. 13:42-8.1(a) because she failed to maintain a record accurately reflecting contact with S.R. Video recordings demonstrate that Kleinman's records provided an inaccurate depiction of her contact with S.R. The records also violated N.J.A.C. 13:42-8.1(c), because those records failed to include "material pertinent to the nature and extent of the professional interaction," N.J.A.C. 13:42-8.1(d), because the records lacked any reports from other professionals such as S.R.'s pediatrician or DYFS; and N.J.A.C. 13:42-8.1(b), because not all records were made contemporaneously.

As to Count VI we concur, as the ALJ found upon review of the testimony of D.C., Dr. Martindale, Marsha Kleinman and Jacqueline Marsh, that Respondent's suggestion that D.C. should fabricate allegations of child molestation against her husband and failure to provide D.C. with a certification as a battered woman, constituted professional misconduct under N.J.S.A. 45:1-21(e). This finding is based on Kleinman's suggestion that D.C. instigate a fraud on a



court by fabricating sexual abuse, and her failure to provide the battered women's certification to D.C., because the Respondent chose to refer D.C. to her sister for legal services after D.C.'s retainer was exhausted. We note in our expertise, this conduct also constitutes a boundary violation and is unethical.

#### MITIGATION HEARING

Upon a finding that cause for discipline had been found, the Board held a mitigation hearing for determination of penalties immediately following the Board's announcement of its determination. Respondent presented ten character witnesses. The majority of the witnesses were professionals, a director of a battered women's coalition, a pediatrician and long time friend, a family member, an attorney, a public defender, a patient and neighbor who testified as to Respondent's dedication to development of standards for domestic violence in NJ, her lack of bias towards fathers who were accused of sexual abuse, her professionalism and creativity, and their dependency on the Respondent to assist in working on outstanding issues. The remaining witnesses were professionals who have worked with the Respondent and testified as to her moral character and her intelligence and clinical practice. Respondent's brother who is a retired clinical psychologist, testified about the nature of the Respondent's family, her strength of character and her financial situation. Since 2006 her brother and sister-in-law gave her a total of \$31,000 to assist with the payment of various

expenses including private school tuition, due to Respondent's dwindling practice.

Respondent testified that she comes from a family involved in social justice issues. Her father, a licensed New Jersey psychologist was very influential in her life. She described herself as a devoted aunt, daughter and mother and good neighbor. She helps her ill mother along with aides who care for her 24/7. She stated that perhaps she is selfless and she believes she has no tolerance for injustice. She has been a single parent from the time that her daughter, now in college, was 9 days old.

Kleinman testified that she knows the difference between a "treater" and an evaluator. She has been an evaluator over the course of her 25 year career and she know[s] the standards, know[s] the difference, know[s] what my obligations are and have always followed them." She described working as a psychologist with children who are abused as her life's love. She worked at Women Aware, a Middlesex County program for battered women. She conducted her doctoral research there performing two assessments on the needs of battered women and children in the State of New Jersey.

Respondent testified that her practice was affected immediately by this matter. She claimed information placed on the Internet by a father's rights group in New Jersey spread "viciousness" which destroyed her practice. Respondent testified that she is grateful that she had health problems that developed into a disability so

that she was able to have an income during the period of time that her practice dwindled. Respondent identified and marked into evidence exhibits D-1 through D-8. The documents consist of the first two pages of Respondent's federal tax returns without any schedules attached for the years 2004 - 2011.

Respondent testified that she has limited assets and is in debt. She estimated the worth of her house at \$330,000 which is mortgaged and on which there is an unspecified home equity loan. She asserted that she has a small business loan and owes her attorneys over \$600,000. She acknowledged owning a 1999 motor vehicle with over 200,000 miles. She further testified that she survives on payments from private disability insurance which will be terminated should she lose her license. She is currently "an adjunct professor" at Kean University and is teaching two courses making about \$6800.00.

Respondent testified during the administrative proceedings that she did not believe that she did anything wrong in the treatment of S.R. On mitigation, she testified that this matter has caused her financial and personal pain. She acknowledged that "I believed I was doing appropriate treatment" and that "perhaps I should have sought [the] consultation from the Board, from someone, because this case was such a contentious case." Even after going through this proceeding, on mitigation it was Respondent's understanding that her treatment of S.R. may not have been "empirically valid treatment

because her recordkeeping was not sufficient for the ALJ to determine." She continued however that "this treatment has worked for twenty years" for trauma. Respondent expressed a willingness to be re-educated in the area of record keeping. She went on to state she wants to continue practicing psychology and that "based on the Board's findings" she is willing to be educated and retrained and work with a supervisor should the Board permit her to maintain her license.

Upon further questioning concerning what in retrospect she would have done differently in this case, Respondent replied in part that she would document that she requested records. She alleged that she asked the Court for documentation, and did not document her requests in the patient record. She also testified that she wished she had documented that "the child was curious ... about her father. And I wanted to give her an opportunity to explore that relationship with him." She testified that when you see she is pushing hard with the child, she wished she had never taped the sessions. Respondent also testified that she would have documented her notes concerning the EMDR "in terms of points, triggers, what you target." Respondent also stated that in the future she would follow up with a judge when promised documents which she never received.

Following conclusion of Respondent's presentation in mitigation,

the State provided a proffer for witness Mr. B<sup>4</sup>, who would testify to his knowledge as to Dr. Kleinman's reputation as well as his own personal experience. Respondent objected that she did not have the file regarding the case referred to by Mr. B. in order to prepare, that this witness had filed a complaint on which the Board has taken no action, and that the testimony would be unduly prejudicial. The Attorney General reminded the Board that the Respondent had presented her character witnesses in mitigation, and the State did not have details regarding their cases and that the State should be permitted to present witnesses as to their experiences with Respondent. The chair permitted the testimony of Mr. B.<sup>5</sup>

Mr. B testified describing his testimony as emotional, saying he waited 15 years for this day. At the time of Respondent's involvement with his daughter, he was going through a divorce. His wife hired the Respondent to provide services to his then three year-old daughter. As a result of the Respondent's involvement in his daughter's case, his visitation rights were terminated. He was accused of sexual impropriety with his daughter and his daughter was placed in his parent's care until they were charged with wrongdoing.

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<sup>4</sup>The State requested (without objection by Respondent) that witnesses on mitigation/aggravation issues who have children with mental health issues be referred to only by initials during their testimony to protect the confidentiality of the children.

<sup>5</sup>Mr. B was the father of a client of Respondent, who was therefore familiar with the details of the client's care as was evident from the cross-examination by Respondent.

His child was eventually placed in foster care until she was finally released to his custody where she remained until going to college at the age of 19.

During Respondent's involvement with his daughter, several vacations he had planned to Disneyland with his daughter were terminated at the last minute due to false accusations based on correspondence the Respondent had supplied to the court. Respondent recommended no visitation until Mr. B attended sessions with the Respondent. Mr. B declined to meet with the Respondent without a tape recorder as he asserted she had misquoted him in her papers, and as his ex-wife had accused him of "hideous" things he wanted to keep the record straight. Respondent called him "hostile" and refused to let him in her office with a tape recorder. Respondent then claimed he refused to meet with her. The fourth time his wife attempted to thwart his vacation to Disney her attempt was denied by the court. He was investigated on four occasions by DYFS and allegations were found to be unsubstantiated each time.

Mr. B testified he read "horrific" papers submitted to the court by Dr. Kleinman saying that the child fears the father and doesn't feel comfortable around him, on the same day that his daughter would run out with arms open, hugging Mr. B, loving him and having a great time. Mr. B testified that he's sure Respondent has good intent but "she may become so fixated on what she wants to believe, she may not see ... the reality of the relationship, especially not having met

me ... ."

On cross-examination, Mr. B acknowledged that Respondent's involvement in his custody case concluded shortly after the disagreement regarding taping of Mr. B's meeting with Respondent, and that the Board had taken no action regarding Mr. B's case.

The State also presented the testimony of Mr. O. whose daughter was treated by Respondent in 2005. Mr. O testified that the Respondent's daughter and his daughter were close friends and attended the same school. His daughter had severe difficulties, was hospitalized 3 times, and was suspended from school. This information was relayed to Respondent by her daughter. Mr. O testified that he received a call from the Respondent claiming that she had heard about his daughter's issues from her daughter and that she could "fix her" using EMDR, which she termed a miracle therapy. Respondent also testified that during this first conversation Respondent accused Mr. O's eldest son of sexually abusing his daughter. Mr. O testified that although his daughter was in other therapy, when Dr. Kleinman called they were desperate parents, and she was promising a miracle cure, so they brought their daughter to Respondent. She was in treatment with Respondent for two months and billed \$10,000 for 30 visits, one half of them by telephone. After two sessions, Respondent told Mr. O's wife that Mr. O. was abusive towards her and their daughter. This became a recurring message from Respondent. He met with Respondent in formal session on only one occasion. Mr. O

testified as to blurring of the patient/mother of friend boundaries as Respondent continued to have the client visit with Respondent's daughter in Respondent's home and permitted his daughter to stay overnight at her house on two occasions. His daughter informed him that Respondent had told her that she could live with Respondent and her daughter and that the daughters were like sisters. He confronted Respondent about this and asked Dr. Kleinman to retract the offer, but the Respondent would not tell Mr. O's daughter that she could not live with her. Mr. O. testified that Respondent "dissolved" his parental authority. Ultimately his daughter was hospitalized again for overdosing on Benadryl and she was sent to Utah for one year to a rehabilitation facility.

On cross-examination, Mr. O testified that he filed a complaint against Respondent with the Board and that the status of the complaint is pending.<sup>6</sup> Extensive cross-examination developed the O family's mental health history including Mr. O's daughter being in

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<sup>6</sup>Respondent moved to strike the testimony of Mr. O in its entirety as it concerns uncharged conduct the State has had for some time and the Respondent has not been given the opportunity to review the file and develop the case. The State responded that Mr. O's testimony is no different from the patients who submitted letters or appeared as character witnesses for the Respondent. The State had no information on the nature and circumstances of the cases they discussed. Mr. O is testifying to present a picture of his interactions and those of his family with the Respondent and the effect on his daughters' care. On the issue of uncharged conduct, the State cited State v. Tanksley 245 N.J. Super. 390 (App. Div. 1991) that provides that "a sentencing judge may consider a defendant's juvenile record of charges that did not result in convictions." The Board voted to deny Mr. Giaquinto's motion.



therapy since the 6<sup>th</sup> grade, her involvement in hockey and Lacrosse and her history of four knee surgeries. Respondent asserted that the suggestion that his family enter family therapy was reasonable given a child who may have been pushed too much by parents and Respondent's concerns regarding emotional abuse. It was elicited that O's wife was familiar with EMDR treatment at the time her daughter treated with Respondent. Mr. O also testified confirming that his daughter attended a sleep over at Respondent's residence on New Year's Eve 2005 and a Valentine's day 2006 sleep over that was prolonged due to a snowstorm .

The State's next witness was Dr. Anthony D'Urso. The chair permitted the testimony over Respondent's objection that as the State had made a representation he was testifying to the reputation of the Respondent in the community but Respondent now understood he was to testify about a particular case. The State proffered that Dr. D'Urso was going to express his opinion on what he was able to observe regarding Dr. Kleinman's practice. The Attorney General had asserted this was an issue of semantics as this witness was to provide general information on the Respondent's actions in a case which the State did not know the particular facts of but which was relevant to Respondent's reputation and character. The Chair permitted the testimony.

Dr. D'Urso is the supervising psychologist and section chief of

the Audrey Hepburn Children's House. He is responsible for all clinical, psychological and psychiatric services in a regional child abuse center. He testified that he is familiar with psychological forensic evaluations and he has performed court-related evaluations over the last 30 years. He has served on an ad-hoc advisory committee for the Department of Children and Families and the Department of Human Services to establish guidelines in the forensic assessment of families where child abuse is alleged to have occurred. Dr. D'Urso also testified that he has known of Dr. Kleinman as a psychologist for a decade. Dr. D'Urso testified that he is familiar with the result of her involvement in a DYFS case where Respondent engaged in multiple interviews over a three day period. Respondent also brought someone referenced as a sex abuse expert to interview the child. All of the interviews preceded a Division of Youth and Family Services referral. Dr. D'Urso testified that this number of interviews made the case unable to be effectively investigated by the criminal authorities on a suspicion of abuse.

Dr. D'Urso further testified that the law requires reporting of suspicion of sexual abuse to DYFS. The prosecutors are looking for a free narrative, open-ended investigatory approaches to be done close in time to the making of the allegation.

Upon cross-examination the witness declined to give the name of the case as it was a DYFS case and is confidential. Respondent's counsel renewed his objection that this was not reputation testimony.

The objection was overruled. Dr. D'Urso then testified that he conducts a forensic interview academy training detectives, prosecutors and mental health practitioners on how to conduct investigatory interviews. Dr. D'Urso was not aware of the number of cases that the Respondent was involved in as an expert, nor her involvement in some other activities, however they would not change his prior testimony. Following presentation of their witnesses, the State entered certain documents into the record<sup>7</sup>.

In closing, Respondent's counsel asked the Board to consider that Respondent was involved in a very contentious case with a history prior to her involvement. A Superior Court Judge gave her a dual role to perform which Respondent claimed created murky lines between where forensic psychology ends and therapy begins. Counsel acknowledged Respondent crossed the lines and made mistakes but

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<sup>7</sup>The State moved into evidence S-2 - the certification of Ms. Eisenberg with a letter dated 2005. Respondent's counsel objected to this exhibit as it was received one day after the Board's October 15, 2012 date for receipt of information. The Board accepted the exhibit into evidence. S-3 - a copy of website created by the Respondent and entitled "The Truth about Dr. Kleinman" was entered into evidence. Respondent objected to this exhibit as it was not provided to him. The State argued that it was part of the proceedings in the OAL and was included in a motion brought by the State, the website is in the public domain and it was noticed in the October 15, 2012 letter presented to Respondent's counsel. The Board admitted the exhibit into evidence. The Respondent then submitted into evidence exhibits D-1 through D-8 - Respondent's tax returns from 2004 - 2012 into evidence as well as exhibits consisting of 83 character letters from mitigation witnesses who were not appearing (A1 - A28 letter from colleagues, B1- B16 letters from patients and C1- C39 family and friend letters).

asserted her intent was to help as she is a passionate advocate for children and the downtrodden.

Respondent's counsel also asked the Board to consider what Respondent knew about the case at the time of her involvement. Counsel acknowledged Respondent did not have evaluative reports to review, she only received distilled information from the Judge.

Counsel urged that in evaluating the discipline to mete out, the Board should consider there was no evidence of harm to the child, and the ALJ found that no false memories of sexual abuse were implanted. Respondent submitted that there is sufficient information in the record to suggest that any harm done to the father-daughter relationship resulted from the father's own behavior.

Respondent's counsel acknowledged he had argued against the position as articulated in the Initial Decision which the Board has now fully accepted. However, it was his contention that the Respondent respects the Board, accepts the Board's determination and has apologized. As to what she would do differently today, the Respondent has admitted she would reach out for help from a fellow psychologist and not be "so strong in her assumption" in the case. He asserted she was remorseful and sincere, has accepted responsibility and is willing to do things differently.

Respondent pointed to some of the character letters submitted. A letter from Dennis Brotman, Esq. (A-11) discusses Respondent going the extra yard; in A-18, the mayor of Highland Park discusses

Kleinman's genuine care and compassion. 3 letters (A-25 from Attorney Walsh, C-2 from her brother and C-11 from her daughter) discuss her relationship with her mother. Other letters discuss her deep faith, and her courage and principles.

Respondent's counsel also asked the Board to give little weight to the State's witnesses during the mitigation phase, as the Board took no action on Mr. B's complaint, as Mr. O's case is an example of "no good deed goes unpunished," as Respondent responded to a request from her daughter to help her best friend. Dr. D'Urso knew very little about the Respondent, had one case, and his testimony should be given little if any weight<sup>8</sup>. Respondent's counsel argued this is not a revocation case due to the length of time it took to get resolved, as Respondent had highly credentialed experts testify on her behalf, and as the case did not demonstrate harm to a patient.

Counsel for Respondent requested that the Board consider that her practice is destroyed based on adverse publicity, and that "she is broke." He argued she is not likely to repeat this behavior, and asked she be allowed to practice with re-education including record keeping and ethics courses, and EMDR advanced training.

The Attorney General in closing, reminded the Board that it was

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<sup>8</sup>The Respondent's counsel requested that the legal advisors to the Board give the Board limiting advice regarding the testimony of State's witnesses, Mr. O, Mr. B and Dr. D'Urso. The State objected to this limiting advice on the basis that the Board knows the duty that it is charged to follow and is aware of the appropriate weight to give the evidence. The Board took this request under advisement.

being asked to fulfill it's duty to protect the public and determine the appropriate discipline. The deputy urged the Board to consider whether Dr. Kleinman's conduct created a risk of harm to a three year-old child given a one year period of separation from her father, the effect on her relationship with her half-brother and the effect of being in therapy for three-quarters of her life. The Attorney General argued that it is not the State's burden to prove harm, rather the Board is empowered to act on a risk before harm actually occurs, since it is the Board's duty to protect the public.

It was the State's position that there has been a very serious risk of harm as a result of Dr. Kleinman's conduct. For example, it has been found that Dr. Kleinman suggested to client D.C. that she falsely accuse her husband of sexually abusing their one year-old daughter to obtain advantage in a custody hearing. The State argued there is nothing worse than being falsely accused of sexually abusing a child and that there is a risk of harm to a child who has been led to believe that her father sexually molested her when he didn't.

Additionally, the DAG argued that S.R. was exposed to a risk of the creation of false memories of sexual abuse by her father or in the event the child had been sexually abused, Respondent's method of questioning posed the risk that any chance of an effective criminal investigation was destroyed. It was the position of the Attorney General that in either case, Dr. Kleinman's conduct subjected this child to a grave risk of harm.

The Attorney General also argued Dr. Kleinman's conduct exploited her client's trust, for example, she documented things in the record that S.R. did not say as evidenced by the videotape. She also encouraged the child to tell her secrets when in fact there was nothing secret, as Respondent was reporting the child's statements to the Court. She additionally exploited the child by putting her image and part of a video session on the website created in part to raise money for Respondent's defense. These actions the State asserted, all exploited the child's trust.

Further, Respondent was expected to adhere to the standards of practice of psychology and to act in the child's best interest in her court appointed role. She was not expected to manipulate the court with false and misleading information as the DAG asserted was proven.

The State asked the Board not to permit or condone practice by a licensee that was so biased and overzealous that it destroyed the public's trust in the practice of psychology. The Attorney General argued Respondent's conduct was incompetent, willful and reckless, and that the videotapes demonstrate incompetence. A three year-old is viewed telling Respondent about her father having a magic wand. Respondent turns the magic wand into her father's penis and then tells the child over and over again that her father put his penis in her mouth. On the videotape, the child states "no, he didn't" over and over.

The Attorney General asked the Board to consider the events of

November 4 and 5<sup>th</sup>. S.R. was taken to the emergency room and examined on November 4, because she had drawn all over her arms, legs and genitalia with magic markers. That evening, S.R. presented to Kleinman's office. During the session on the tape Respondent tells the child that D.R. did something to her with the markers. However, D.R. had not seen his child since early August of that year. We also see Respondent telling the child that her father was present during an evaluation conducted by another licensed psychologist, Dr. Rosenbaum. On the November 5th tape the 3 year-old is back in the Respondent's office and Dr. Kleinman again tells her that her father was present during the evaluation by Dr. Rosenbaum and S.R. is heard on the tape saying "no, no, no, no, no."

After a lunch break the child is brought back for what the DAG argued was interrogation rather than therapy. During the session the Respondent continues to tell the child that she saw her father at Dr. Rosenbaum's. On the videotape and in the transcript as the session of November 5 is winding down, the mom comes in and Dr. Kleinman tells her she can't get S.R. to say anything. A few moments later you hear the mom say, "she won't do it right?" At that point Dr. Kleinman warns P.R. they are being taped. The Attorney General argues that clearly the actions of Respondent were intentional. She urged that a licensee who manipulates a three year-old child in this fashion cannot be remediated by taking coursework.

The Attorney General argued that Kleinman lacks insight into the



wrongfulness of her conduct. She claims to have taken responsibility but she has not removed her website, and she proclaims in the website to the public that she is a victim of father's rights groups. She has also failed to demonstrate that she believes that she has engaged in conduct that was wrong. When asked what she would do differently, she said she would reach out for consultation. But in fact she did reach out for consultation in this case and it made no difference. She claimed she would better document, but fundamentally this case is not primarily about poor or inadequate documentation. The State pointed out that Dr. Kleinman never stated that she would not subject a three year-old to coercive or leading questions. The Board did not hear Dr. Kleinman admit that she would refrain from saying misleading things in letters to be relied upon by a court. The Attorney General's position is that Dr. Kleinman has no insight and she would not do anything different if permitted to practice. Dr. Kleinman told the Board she is the only one left who is qualified to treat children who have been sexually abused and accused virtually all of the licensed psychologists involved for the State in this case of being affiliated with father's rights groups.

The Attorney General urged the Board to consider Mr. B. who was also informed by Dr. Kleinman that he should not have contact with his daughter without having ever met him. Mr. O. described how she interjected herself into his family, took over the care of his daughter who was a close friend of Respondent's daughter, and accused

both his son and him of abuse. The Attorney General argued this is not passion. The Respondent sees herself as a hero, the only one left in NJ who can treat children who have been sexually abused. She sees herself as a martyr who has been victimized by father's rights groups.

The State argued that remedial measures short of revocation will have little impact on this licensee and a major impact on the protection of the public because the Respondent does not believe she did anything wrong. The conduct proven in this case is not the result of lack of training or information and cannot be remedied by taking a course. Dr. Kleinman was dishonest. She was not forthright about her training when testifying before the Board. She never had one year of supervision with Dr. Tinker. She asserted at this final hearing that legal and health professionals made a finding that D.R. sexually abused his daughter, which was simply not true.

The State further urged the Board to consider the vulnerability of the victim. Respondent testified that she would never hurt a child. Yet she told a three year-old eager to speak to her father as heard on audiotape that "your father doesn't want to talk to you," which hurts a child. She urged D.C. to falsely accuse her husband of sexually abusing her one year-old, which would hurt a child. The DAG urged that the Board revoke the license of Respondent and impose the penalties as recommended by the ALJ. The State also requested costs in the amount of \$252,781.51 and issuance of an order requiring

the Respondent to remove the videotape of the child from the website.

#### DISCUSSION ON SANCTIONS

The Board, after the mitigation presentation and closing arguments of counsel, and in consideration of the egregious nature of the violations in this matter, following deliberations, moved to adopt the recommendations of the ALJ to revoke the license of the Respondent to practice psychology in the State of New Jersey, impose penalties in the amount of \$60,000, and costs, as the appropriate sanctions in this matter. Respondent has admitted that she is aware of the role of a therapist and an evaluator based on her 25 year career and knows the standards of practice, yet her actions in the S.R. matter evidence that she flagrantly ignored the conflict created by the multiple roles she assumed, and engaged in actions that violated both the standards of practice of a therapist and of a forensic evaluator as demonstrated by the leading and coercive nature of the questions to which she subjected a three year-old child, and her failure to independently assess the trauma and the causes of the trauma. Having education, training and experience in forensic practice, Respondent nonetheless blatantly ignored professional practice standards that obligated her to inform the court that professionally she could not assume both roles as was testified to by both the State's and Respondent's forensic experts. Having experience and training, she nonetheless relied on a theory of sexual abuse without any independent assessment of sexual abuse.

Having assumed both roles, Respondent throughout this matter during the testimony and evidence presented at the administrative proceeding, and as asserted at the mitigation hearing, claimed that her conduct in the S.R. matter was that of a psychologist performing play therapy. The evidence, including videotapes, audiotapes, the client record of S.R., and letters to the Court all demonstrate that the Respondent assumed the evaluator role as well. Respondent's play therapy sessions evidenced repeated questioning that was coercive and badgering of the child and appear to provide little therapy, but rather, investigatory tactics.

The Board was troubled by Respondent's pursuit of treatment on a three year-old child with EMDR without obtaining advanced training. Respondent falsely represented having obtained such training as testified by Dr. Tinker, her claimed supervisor. A review of the client record of S.R. evidences that Respondent failed to incorporate targets, and achieved very few of the eight stages of the treatment.

The Board has concerns that Respondent lacks insight into appropriate boundaries of a licensed psychologist as evidenced by her readiness to recommend to a court that D.R.'s visitation with S.R. be terminated based on harm to the child when Respondent failed to independently assess trauma and failed to entertain alternative hypotheses. In the matter of D.C., Respondent's lack of boundaries was demonstrated by her referral of D.C. for legal services to

Respondent's own sister.

Although our disposition is grounded solely on the basis of the findings in this case, Respondent's lack of boundaries was again demonstrated during the presentation of the State's mitigation witnesses. Most disturbing, in the O matter, Respondent's providing treatment to the close friend and classmate of her daughter demonstrates in the extreme, her lack of insight into her blurring of professional boundaries. Those boundaries were initially violated by Respondent's contacting Mr. and Mrs. O to suggest initiating treatment of their daughter, and were further overstepped by Respondent's permitting O's daughter to attend sleepovers at Respondent's home and by declining to inform O's daughter she could not live in Respondent's residence. Even now Respondent fails to recognize serious boundary issues of treating a close friend of one's child, characterizing the episode as "no good deed goes unpunished."

In the B matter, there was testimony that Respondent recommended visitation be terminated based on alleged sexual impropriety without Respondent ever having met or assessed the father. This once again demonstrates Respondent's conduct in this matter is not isolated.

We have no doubt that Respondent is well-regarded by her family, some of her colleagues and patients as reflected in the numerous letters received addressing her character, commitment and dedication to clients. However, her actions with clients in the cases presented, evidence a psychologist who has crossed appropriate boundaries on

several occasions, repeatedly misrepresented facts regarding her training, and fails even now to recognize the improprieties in which she has engaged. Her demeanor as evidenced by her limited acknowledgment of errors at mitigation bespeaks a practitioner who poses a danger if she continues to practice.

Respondent's conduct includes serious violations of basic standards of practice, involving repeated boundary violations and Respondent's inappropriate questioning of a child as well as a multitude of other findings. This matter involves an extraordinary lack of insight by the licensee into the nature of her misconduct, a failure to take responsibility for her actions, and repeated dishonesty to the Board and to the Court. In order to protect patients, sanction the improprieties found, and ensure future safe practice, the Board agrees with the ALJ's recommendation to revoke the license of the Respondent to engage in the practice of psychology, with consideration of limitations and restrictions should she apply to re-enter practice, pursuant to N.J.S.A. 45:14B-25, including supervision and ongoing therapy for the Respondent.

As to the imposition of costs and monetary penalties in this matter, we have reviewed the costs sought by the State and find the application sufficiently detailed and the amount reasonable given the length of time and complexity of the prosecution of this matter. Our analysis follows.

The Attorney General's certification in this matter extensively

documented the time the attorneys expended in these proceedings, detailing costs beginning in July 2007 up to June 29, 2012 which reflected a total attorney fees in the amount of \$252, 708.51.

The rate charged by the Division of Law for a Deputy Attorney General of \$175 for a DAG with 10 or more years of experience, \$155 for 5 or more years and 0 -5 years at \$135 have been approved in prior litigated matters and appears to be well below the community standard. The Board finds the certification attached to the billings to be sufficient. We note that no fees have been sought for any time after June 29, 2012, following which oral arguments on exceptions, response and appearance on the Motion to Dismiss and Motion to Remand, and additional transcript costs were incurred. We find the application to be sufficiently detailed to permit our conclusion that the amount of time spend on each activity, and the overall fees sought are objectively reasonable as well. (See, Poritz v. Stang, 288 N.J. Super 217(App. Div. 1996)). We find that the Attorney General has adequately documented the legal work necessary to advance the prosecution of this case. We are thus satisfied that the Attorney General's claims are reasonable, especially when viewed in the context of the seriousness and scope of the action maintained against the Respondent.

Respondent argues that costs and monetary penalties should not be imposed because Respondent has no psychological practice and little source of income. Respondent presented tax returns from 2004

-2012 showing reduced income, but without including schedules or certifications of assets she may hold. Respondent also provided limited testimony regarding some assets she possesses, and that a sibling provided some financial assistance including private school tuition for her daughter. The burden was on Respondent, and although we find she has not adequately documented an inability to pay the costs, nonetheless, given the substantial reduction in income testified to, the Board is substantially reducing the amount of attorney fees imposed by \$99,500 (eliminating the fees of DASG Rubin and Silva). As to other costs sought, sufficient documentation has been submitted to support imposition of the following costs( including the attorneys fees discussed above). Costs are traditionally imposed pursuant to N.J.S.A. 45:1-25 so as not to pass the cost of the proceeding onto licensees who support Board activities through licensing fees.

|   |                      |
|---|----------------------|
| Psychological Board and OAL transcripts               | \$10,106.00          |
| Witness costs for Dr. Martindale, Ph.D.               | \$53,598.00          |
| Witness costs for Dr. Adler-Tapia, Ph.D.              | \$25,739.00          |
| Attorney and Paralegal fees<br>(following reductions) | <u>\$153,200. 00</u> |
| Total costs:  | \$242,644.00         |

For all the reasons set forth in the Initial Decision and in this Final Decision and Order,

**IT IS THEREFORE ON THIS 4th DAY OF DECEMBER, 2012**

**AS ORALLY ORDERED ON THE RECORD ON NOVEMBER 5, 2012:**



1. Respondent's license to practice psychology in the State of New Jersey shall be revoked. The effective date of the revocation shall be thirty days after the hearing date, that is, December 5, 2012. During the period of revocation, Respondent shall derive no financial remuneration directly or indirectly from the practice of psychology. The attached Directives Regarding Future Activities of a Board Licensee Who Has Been Suspended/Revoked is incorporated into this Order.

2. Upon any application for reinstatement which pursuant to N.J.S.A. 45:14B-25 may be made no sooner than after the expiration of one year from the date of revocation, the burden shall be on Respondent to prove compliance with this order, and fitness and competency to practice. In addition to considering whether to reinstate her license, the Board will consider whether to impose restrictions and conditions including but not limited to the following:

a. whether Respondent shall provide psychological services of any kind to persons under the age of 18.

b. whether Respondent shall engage in psychological work of a forensic nature;

c. whether Respondent shall provide any psychological services regarding sexual abuse;

3. The Respondent shall participate in psychotherapy with a New Jersey licensed psychologist pre-approved by the Board once per week

for a minimum of one year, prior to any application for reinstatement of license. Psychotherapy shall include but not be limited to discussion of boundary issues and exploration of personal issues which could impact on practice. The therapist shall be provided with copies of Initial Decision and this Final Decision and Order. Respondent shall be responsible to ensure that the therapist submits to the Board quarterly reports providing the dates of attendance in therapy, a statement of whether the Respondent is satisfactorily participating in the therapy process and her progress in therapy. The Board shall be informed immediately of any changes in therapy.

After completion of a minimum of one year of therapy, the Respondent may apply to the Board for a determination as to whether the Board approved therapy shall continue. The Respondent shall appear before the Board if requested, or a committee of the Board for consideration of this issue.

4. The Respondent shall complete a boundary course pre-approved by the Board within six months of the entry of this order. Written documentation shall be submitted from the course sponsor to the Board that confirms Respondent's full attendance at and successful completion of the course. This proof shall be received by the Board prior to considering reinstatement of the Respondent's license to actively practice psychology.

5. The Respondent shall complete a forensics course, including issues regarding appropriate limitations on therapeutic practice to

be pre-approved by the board, within one year of the entry of this order and prior to consideration of reinstatement of the Respondent's license to engage in the practice of psychology.

6. The Respondent shall complete a record keeping and an ethics course. Both courses shall be pre-approved by the Board and completed within one year of the entry of this order and prior to consideration of reinstatement of the Respondent's license to engage in the practice of psychology.

7. Respondent shall pay monetary penalties in the amount of \$60,000, representing \$10,000 for each of the six counts for which violations were found. Payment shall be made within thirty days of the filing date of this Final Decision and Order, by certified check or money order, payable to the State of New Jersey and forwarded to the attention of J. Michael Walker, Executive Director, Board of Psychological Examiners, P.O. Box 45017, Newark, New Jersey 07101.

8. Respondent shall pay costs in the amount \$242,644.00. Payment shall be made within thirty days of the filing date of the Final Decision and Order, by certified check or money order, payable to the State of New Jersey and forwarded to the attention of J. Michael Walker, Executive Director, Board of Psychological Examiners,

P.O. Box 45017, Newark, New Jersey 07101.

9. Failure to make timely payment of penalties and costs under this Order shall result in the filing of a certificate of debt, and such other proceedings as are permitted by law.

New Jersey State Board of  
Psychological Examiners

By: Nancy E. Friedman Ph.D.  
Nancy E. Friedman, Ph.D.  
Chair

#### APPENDIX-NARRATIVE SUMMARY OF MOTIONS

Respondent filed a motion to dismiss Counts 1-V of the Administrative Complaint on September 4, 2008. Attorney General opposed the motion on 10-21- 2008; Reply by Respondent on 11-4-2008 and second response filed by State on 11-4, 2008. ALJ denied the motion. Respondent next filed an interlocutory review of the ALJ's denial of the motion to Dismiss with the Board on 12/22/2008. State opposed the motion. Board denied the motion on January 2, 2009; Motion for leave to oppose the Board's denial was filed in the Appellate Division of Superior Court January 23, 2009. State opposed and filed brief on 2/4/2009; Appellate Division sealed the case and denied the motion 2/27/2009; Respondent served Interrogatories on 8/13/2008; State responded 10/16/2008; Attorney General served respondent with Interrogatories on 10/23/2007; Respondent submitted response on 9/4/2008; Attorney General alleged answers insufficient, issued specific objections to respondent's answers and demanded videotapes and request for identification of expert witnesses and production of respondent's expert's reports. Respondent objected to State's answers to interrogatories and did not produce names of experts or expert reports. Attorney General filed motion seeking relief; Respondent opposed 12/4/2008; ALJ found State's responses appropriate and ordered production of respondent's expert report on 12/18/2008. Respondent produced reports on 3/6/2009 and 7/7/2009; 10/20/2008 respondent sought adjournment to file a motion in family court to obtain matrimonial file in the matter of D.R. v. P.R. sealed by Judge Sivilli; Attorney General opposed request. ALJ granted hearing and adjourned the matter to April 2009; 10/30/2008 Respondent filed Motion objecting to State calling Dr. Martindale as expert witness; 11/7/2008 Attorney General opposed motion; 11-9-2008 ALJ issued order permitting Martindale to testify; Attorney General filed a motion requesting inquiry by ALJ into the respondent's possession of a sealed file; Respondent opposed on 1/26/2009; State filed a certification; Respondent opposed on 1/29/2009; 2/2/2009 Respondent filed motion in Superior Court to intervene in D.R. v. P.R. and extend the sealing order; 2/19/2009 Respondent requested third adjournment of the hearing dates to obtain documents from matrimonial matter. Request granted from April 2009 and rescheduled to January 2010; Attorney General opposed on 3/5/2009 re-filed reply in support of motion filed on 3/11/2009. Family court permitted documents to be used in administrative hearing; In 9/2008 Respondent expressed intent to add DYFS file relating to the allegations of sexual abuse of S.R. by D.R.; Attorney General objected on 10/23/2008. 11/21/2008 Respondent filed motion identifying reasons to obtain DYFS file; State opposed 12/11/2008. ALJ conducted in camera review and permitted some documents to be released; State filed opposition to release of DYFS file on 4/15/2009; Respondent filed reply; DYFS objected 4/20/2009; Respondent filed a surrepley in support of release of DYFS file on

4/22/2009. ALJ decided on 4/23/2009 to release DYFS file to parties under seal; Respondent sought DYFS documents that did not relate to S.R./D.R. Application filed on 8/28/2009; Second motion for additional documents and sanctions on 9/25/2009; State opposed motion 10/14/2009; respondent replied 10/19/2009; ALJ performed in camera review; 9/2/2009 Attorney General filed motion against respondent's counsel for releasing the State's expert report to the Star Ledger; Respondent opposed on 9/3/2009; ALJ declined to issue sanctions. Attorney General filed motion to bar certain of respondent's expert and fact witnesses on 12/8/2009. Respondent opposed; AG filed reply 12/29/2009. Respondent submitted sur-reply on 12/30/2009. 12/2009 State filed motion to require respondent to produce documentation offered to the public; respondent opposed and filed a motion to remove the DAG and the Board; motion held due to elevation of ALJ Paone to Superior Court; New ALJ appointed in January 2010 and hearings adjourned to March 12, 2010. Respondent requested a fourth adjournment in April 2010 as expert witnesses not available due to schedule conflicts. Hearings rescheduled to 9/2010. Attorney General filed motion alleging respondent breached confidentiality for putting a portion of video session of S.R. on website created to obtain funds in respondent's defense. Respondent opposed. ALJ denied motion 9/2/2010. State filed motion for reconsideration on 9-8-2010. 8/2010 the State re-filed its motion to bar certain respondent witnesses and request proffers for other witnesses. Respondent presented proffers on 9/8/2010. 9/16/2010 State renewed its motion. 9/8/2010 Attorney General filed motion to permit Robert Tinker, Ph.D., to testify via video conference; Respondent opposed. State replied on 9/21/2010 and renewed its motion on 9/29/2010. ALJ granted motion; Respondent filed a motion to recuse the ALJ on basis of bias on 10/25/2010; Attorney General opposed on 10/26/2010. ALJ denied the motion. Next respondent filed a motion on 10/27/2010 to bar testimony of D.C. State opposed; ALJ denied the motion. All hearings rescheduled to March 2, 2011 due to illness of counsel for respondent. 2/2011 respondent filed multiple subpoenas for individuals to appear at hearings. State filed motion to oppose on 2/25/2011 as to those not previously identified as witnesses. Respondent opposed motion March 1, 2011.

DIRECTIVES REGARDING FUTURE ACTIVITIES  
OF BOARD PSYCHOLOGISTS WHO HAS BEEN SUSPENDED/  
REVOKED AND USE OF THE PROFESSIONAL PREMISES

A practitioner whose certificate is suspended or revoked or whose surrender of certificate with or without prejudice has been accepted by the Board shall conduct him/herself as follows.

- 1) Promptly deliver to the Board the original license and current biennial registration.
- 2) Desist and refrain from the practice of psychology in any form either as principal or as employer or as employee or agent of another licensee or other health care provider.
- 3) Inform each patient at the time of any inquiry of the suspended or revoked status of the licensee. When a new psychologist is selected by a patient, the original or a complete copy of the existing patient record to the new psychologist. If no new psychologist is selected, the record shall be made available to the patient. Such delivery of record does not waive any right of the disciplined practitioner to claim compensation earned for prior services lawfully rendered.
- 3) Not occupy, share or use office space in which another certificate holder practices acupuncture.
- 5) Desist and refrain from furnishing Psychological services, giving an opinion as to the practice of psychology or its application or any advice with relation thereto; from holding him/herself out to the public as being entitled to practice Psychology; or from advertising or writing in such a manner as to convey to the public the impression that such person is a legal psychology practitioner or authorized to practice psychology. This prohibition includes refraining during the period of suspension or revocation from placement of any advertisement or professional listing in any advertising medium suggesting eligibility for practice or good standing. This prohibition further shall include the preparation of an report or appearance before any court or tribunal as an expert witness unless the case involves a matter handled prior to being disciplined and unless the status of the psychologist is disclosed in writing to the person requesting such report or appearance.
- 6) Cease to use any stationery whereon such person's name appears as an psychologist in practice.

7) Not share in any fee for psychological services performed by any other certified psychologist following the suspension, revocation or surrender of license, but the practitioner may be compensated for the reasonable value of the psychological services lawfully rendered and disbursements incurred on the patient's behalf prior to the effective date of the suspension, revocation or surrender.

8) Use of the professional premises. The disciplined psychologist may allow another certified psychologist to use the office premises formerly occupied by the disciplined psychologist on the following conditions only:

(a) The new certified psychologist shall conduct the practice in every respect as his/her own practice including billings, claim forms, insurance provider numbers, telephone numbers, etc.

(b) The disciplined psychologist may accept no portion of the fees for professional services rendered by the new certified psychologist whether by percentage of revenue, per capita patient, or by any other device or design, however denominated. The disciplined psychologist may, however, contract for or accept payment from the new certified psychologist for rent (not exceeding fair market value of the premises and either dispose of or store any materials and equipment.

(c) No continued use of name of the disciplined psychologist personally owned office name or tax or provider identification number.

1. Where the discipline psychologist was using an individual IRS number or where the psychologist was the sole member of an incorporated professional association or a corporation, the disciplined psychologist may contract to rent the office premises to a new practitioner. The new practitioner may use his/her own name and own provider number on all bills and insurance claim forms. Neither the name nor the number of the disciplined psychologist may be used. When the certificate of a sole practitioner has been revoked, a trade name must be cancelled and a professional service corporation must be dissolved.
2. Where the disciplined psychologist is a member of a professional group which uses a group-type name such as the ABC Psychological Group, the disciplined psychologist must arrange to



have his/her name deleted, covered up or otherwise obliterated on all office signs, advertisements published by the group after the effective date of the Board disciplinary order and on all printed billings and stationery. The other group members may continue to function under the incorporated or trade name of the disciplined psychologist, and may continue to use its corporate or professional identification number.

9) Report promptly to the Board compliance with each directive of the order requiring moneys to be reimbursed to patients or to other persons or third part payors, and regarding supervisory reports or other special conditions of the order.

10) An psychologist whose certificate is surrendered, revoked or actively suspended for one year or more shall conduct him/herself as follows:

a) promptly require the publishers of any professional directory and any other professional list in which such psychologist's name is know by the disciplined psychologist to appear to remove any such listing.

b) Promptly require any and all telephone companies to remove the psychologist's listing in any telephone directory indicating that such practitioner is a practicing psychologist.

11) An psychologist whose practice privileges are affected by a Board disciplinary order shall, within 90 days after the effective date of the Board order, file with the Executive Director of the Board a detailed affidavit specifying by correlatively lettered and numbered paragraphs how such person has fully complied with this directive. The affidavit shall also set forth the residence or other address and telephone number to which communications may be directed to such person. Any change in the residence, address or telephone number shall be promptly reported to the Executive Director.